

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 LEHMAN BROTHERS BANK, FSB,) Case No. CV 03-02702 DDP (JWJx)
12 Plaintiff,)
13 v.)
14 BEVERLY HILLS ESTATES)
FUNDING, INC., a California)
corporation; et al.,)
16 Defendants.)
17 _____)

18 Presently before the court is Plaintiff/Intervenors RBC
19 Mortgage Company of California and RBC USA Holdco Corporation's
20 (together "Plaintiffs") Motion for Certification of this
21 court's March 3, 2011, Order dismissing Plaintiffs' Fourth Claim
22 for Relief.

23 Interlocutory appeals by permission are governed by 28 U.S.C.
24 § 1292(b). Under that provision, the statutory certification
25 requirements are as follows: (1) there must be a controlling
26 question of law; (2) there must be substantial grounds for
27 difference of opinion; and (3) it must appear that an immediate
28 appeal may materially advance the ultimate termination of the

1 litigation. 28 U.S.C. § 1292(b); see also In re Cement Antitrust
2 Litigation, 673 F.2d 1020, 1026 (9th Cir. 1982). Plaintiffs have
3 the "burden of persuading the court of appeals [and district court
4 in the first instance] that exceptional circumstances justify a
5 departure from the basic policy of postponing appellate review
6 until after entry of a final judgment." Coopers & Lybrand v.
7 Livesay, 437 U.S. 463, 475 (1978).

8 The court considers each of the § 1292(b) factors in turn.
9 First, Plaintiffs have not offered any support for their conclusion
10 that the court's Order, granting Defendant's motion to dismiss
11 Plaintiffs's Fourth Claim for relief for breach of contract,
12 concerned a controlling question of law. Plaintiffs have remaining
13 tort claims for relief in their Third Amended Complaint, and those
14 claims are unaffected by the court's March 3, 2001, Order. Next,
15 Plaintiffs argue that the court's grant of the motion against them
16 by itself and without more amounts to substantial ground for
17 difference of opinion. This would be true in any instance where a
18 court has ruled against a party and cannot support a finding of an
19 "exceptional circumstance." Finally, Plaintiffs state that
20 interlocutory review will expedite resolution of the litigation.
21 The court is mindful of the need to conserve judicial resources,
22 but the court is not persuaded that interlocutory review of this
23 court's motion to dismiss, which involved only one independent
24 claim, would indeed advance resolution of the matter.

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1 For the reasons stated above, the court DENIES Plaintiffs'
2 Motion for Certification Pursuant to 28 U.S.C. § 1292(b).

3 IT IS SO ORDERED.

4 Dated: April 21, 2011


5 DEAN D. PREGERSON
6 United States District Judge

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